

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JACK BOYDSTON,)
)
Petitioner,)
)
vs.) **Case No. 4:11cv0916 TCM**
)
DAVE DORMIRE,)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court upon its own motion. Petitioner submitted a letter to the Court, in which he seems to be requesting relief from his state court criminal conviction. In the interests of justice, the Clerk provisionally docketed the letter as a petition for writ of habeas corpus under 28 U.S.C. § 2254.

Before the Court will *sua sponte* characterize the instant filing as a § 2254 motion, Petitioner will be given the opportunity to either consent to the classification or withdraw the filing. See, e.g., Morales v. United States, 304 F.3d 764, 767 (8th Cir. 2002).

Petitioner is warned that if he consents to the classification of the instant filing as a motion under § 2254, any future § 2254 motions will be subject to the restrictions on filing second or successive motions. That is, Petitioner will not be permitted to bring a second or successive § 2254 motion unless the United States Court of Appeals for the Eighth Circuit certifies that the second or successive motion meets the requirements set forth in 28 U.S.C.

§ 2244(b)(3)(A). Moreover, Petitioner is warned that § 2254 motions are subject to a one-year limitations period. See 28 U.S.C. § 2244(d).

If Petitioner consents to the characterization of the instant filing as a § 2254 motion, he must inform the Court of his decision, in writing, within thirty days of the date of this Order. And, if Petitioner consents to the characterization, he must then file an amended § 2254 motion on the Court-provided form within thirty days of the date of this Order.

If Petitioner opposes the characterization or fails to respond to this Order, the Court will dismiss the action without prejudice and without characterizing the filing as a § 2254 motion.

Accordingly,

IT IS HEREBY ORDERED that Petitioner shall have thirty (30) days from the date of this Order to formally consent, in writing, to the Court's characterization of the instant filing as § 2254 motion.

IT IS FURTHER ORDERED that the Clerk shall mail to Petitioner a copy of the Court's form petition for writ of habeas corpus under 28 U.S.C. § 2254.

IT IS FURTHER ORDERED that if Petitioner consents to the characterization of the instant filing as § 2254 motion, then he must file an amended § 2254 motion on the Court-provided form within thirty (30) days of the date of this Order.

IT IS FINALLY ORDERED that if Petitioner does *not* consent to the characterization of the instant filing as a § 2254 motion or if he fails to timely respond to this

Order, then the Court will dismiss the action without prejudice and without characterizing the filing as a § 2254 motion.

Dated this 1st day of June, 2011.

/s/ Thomas C. Mumment, III

THOMAS C. MUMMERT, III

UNITED STATES MAGISTRATE JUDGE